

H.R. 3682 and Recognition of Traditional Uses by Acequias in US Forest Services Lands

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Subcommittee on National Parks, Forests, and Public Lands

Legislative Hearing on US Forest Service and Bureau of Land Management Bills

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Vice-Chair Haaland and Members of the Subcommittee,

On behalf of the New Mexico Acequia Association, a statewide, membership-based organization of acequias and community ditches, thank you for the opportunity to provide written testimony regarding H.R. 3682, *Land Grant and Acequia Traditional Use Recognition and Consultation Act*, sponsored by Representative Ben Ray Lujan.

New Mexico's acequias have an ancient legacy of water management and agriculture. They are rooted in civilizations in arid lands dependent on irrigation in places such as North Africa, the Middle East, the Iberian Peninsula, and the Americas. The acequias of present-day New Mexico are an amalgam of the water governance practices inherited from the Moors of Spain and the indigenous agricultural and irrigation traditions of the ancient Pueblo people of the Southwest. The word "acequia" has Arabic origins and can be translated as "quencher of thirst" or "bearer of water."

During the settlement of New Mexico's *mercedes*, or community land grants, during the Spanish and Mexican eras between the 1600s and the 1800s, acequias were among the first works built by settlers. Many acequias were built to divert mountain snowmelt from small streams in the common lands of the land grants and convey that water to the valleys where families would irrigate their crops. Other acequias and community ditches were in areas without land grants. Members of acequias, known as *parciantes*, own water rights, which are attached to their farmland.

New Mexico became part of the United States in 1848 and acequias were recognized in territorial laws in the 1850s. Their governance and water management powers were later codified into New Mexico laws as part of statehood in 1912. Acequias and community ditches are integrated into New Mexico's Water Code and two articles of New Mexico's special districts statutes are devoted entirely to acequias, (Chapter 73, Articles 2 and 3, NMSA 1978). Statewide, there are an estimated 700 acequias in 23 different counties, accounting for nearly two-thirds of New Mexico's counties. In these rural areas, acequias contribute to local agricultural economies that support the way of life and livelihood of thousands of families engaged in farming, ranching, gardening, and food traditions.

Today, the acequias and community ditches in New Mexico continue to use water rights with priority dates ranging from the 1600s through the late 1800s. In contrast, the national forests in New Mexico were created in federal law in the early 20th century, after acequias had already existed for centuries.

In a recent study by the NM Acequia Association and NM Legal Aid, there were 130 acequias and community ditches in the Santa Fe and Carson National Forests in northern New Mexico. The study has not yet determined the number in the Cibola or Lincoln National Forests. The following chart has some examples of acequias and the national forests in which they are located:

Acequia	Priority Date	National Forest	Establishment
Acequia Abeyta y Trujillo	1735	Carson National Forest	1908
Acequia de Encinal	1815	Carson National Forest	1908
Nacimiento Community Ditch	1872	Santa Fe National Forest	1915
Acequia del Llano de San Juan Nepomuceno	1796	Carson National Forest	1908

Vallecitos Ditch Association West	1824	Carson National Forest	1908
Cabresto Community Ditch	1815	Carson National Forest	1908
Cañon Community Ditch	1798	Santa Fe National Forest	1915
Acequia Arriba de Cañones	1807	Santa Fe National Forest	1915

Acequias and community ditches, because they pre-date the US Forest Service, have a historic easement that runs along the length of the acequia and includes the diversion structures, which include small dams known as *presas* and main headgates known as *compuertas*. Acequias for generations have had the ability to access their irrigation waterway as well as their diversions structures to conduct routine maintenance and to replace their irrigation works as needed.

The legal basis for the acequia or ditch easement is an old federal statute, R.S. 2339, which recognizes pre-existing easements on federal lands for ditches. This federal legislation was enacted to “grandfather in” pre-existing ditches that conveyed water across what had become federal land. However, in the modern management of US Forest Service lands, there has been a need for clarity on the extent of this easement right and how it applies specifically to acequias.

The key provision of the bill provides that routine maintenance and minor improvements of acequia infrastructure can proceed as those activities have historically been practiced. This includes cleaning, maintenance, as well as repair or replacement in-kind of acequia infrastructure. Major projects, for example realignment of a ditch beyond the historic easement, would still be subject to special use permitting.

The continued viability of acequias depends upon having access to their irrigation works on US Forest Service lands for routine maintenance and improvements. It is vitally important that acequias have access without the requirement of obtaining special use permits, which can require full compliance with NEPA and which can delay needed maintenance to keep water flowing during the irrigation season. Lengthy permit requirements are simply not necessary and not appropriate for the small scale of acequia routine maintenance and improvement of their irrigation works.

The acequias and the US Forest Service have a mutually beneficial relationship in which the upper watersheds provide the water that acequias use for irrigation of valley bottomlands and recharge of aquifers. In turn, acequias provide rural, cultural landscape surrounding national forests. Acequias have endured for centuries in New Mexico and nurtured land-based communities for generations with water, agricultural traditions, and community.

We ask for your support of H.R. 3682, the Land Grant and Acequia Traditional Use Recognition and Consultation Act. Thank you for your consideration.